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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,449	09/21/2001	Troy Holland	BioCure 161	5786

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EXAMINER	
GHALI, ISIS A D	
ART UNIT	**PAPER NUMBER**
1615	

MAIL DATE	DELIVERY MODE
09/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/960,449	**Applicant(s)** HOLLAND ET AL.	
	Examiner Isis A. Ghali	**Art Unit** 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *13 August 2007*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

ISIS GHALI
PRIMARY EXAMINER

Isis A Ghali
Primary Examiner
Art Unit: 1615

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 1-4, 8-11, 13-17, 21-23, 25 and 27-29 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The specification does not teach that the initiators is not linked to another polymer, neither disclosed what are those another polymer. The present claims encompass initiator not bond to the macromer or unable to bound to any other polymer. Nowhere applicants have disclosed such an initiator. The disclosure is not commensurate with the scope of protection sought by the claims.

Claims 1,2, 8, 9 and 29 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,007,833 (833). US '833 disclosed the initiator group is present as either a pendent group on a polymerizable macromer, or pendent on separate, non-polymerizable polymer backbone, i.e. not bound to the macromer (col .4, lines 50-53). On col. 15, lines 28-31 of US '833, the reference teaches that the initiator can be polymer-bound or non- polymer bound solution. The reference further disclosed that the initiator can be bound to the polymeric backbone, and the expression "can be" indicates that the initiator also can not be bound to the polymer backbone. The disclosed examples and preferred embodiment of the prior art do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi440 F.2d 442, 169 USPQ 423 (CCPA 1971).

Claims 3, 4, 10, 11, 13-17, 21-23 25, 27, and 28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,007,833 ('833) in view of US 6,179,862 ('682) because a conclusion of obviousness under 35 U.S.C. 103 (a) does not require absolute predictability, only a reasonable expectation of success; and references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. US '833 as stated above teaches the initiator can be not bound to the macromer, and US '862 teaches at col.6, lines 3-7 the same initiator system disclosed by the applicants. Further, US '862 disclosed macromers in general, and it is relied upon for teaching the initiator system and the spray delivery recited in the method claim 14. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. It is proper to take into account not only the specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. The rational to modify or to combine the prior art does not have to be expressly stated in the prior art; the rational may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art. The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve different problem. It is not necessary that the prior art suggest the combination or modification to achieve the same advantage or result discovered by applicant. In this case, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide a hydrogel Composition comprising crosslinkable PVA macromer includes one or more polymer pendant polymerizable group of acrylamide as disclosed by US '833 and deliver the composition by spraying and use redox for crosslinking as disclosed by US '862, motivated by the teaching of US '862 that the spraying on the tissue surface followed by redox irradiation enable to form a wound coating, with reasonable expectation of having a hydrogel composition comprising crosslinkable macromer includes one or more polymer pendant polymerizable group that is delivered from sprayer and polymerized by redox irradiation that enables to protect the wound and initiate wound healing with success.

ISIS GHALI
PRIMARY EXAMINER